Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510

SECRETARY OF THE
03 AUG 20 PM

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - **All Filers Are Required to Complete This Page**

1. Registrant Name

International Council of Shopping Centers

2. Address ☐ Check if different than previously reported

1033 N. Fairfax Street, Ste. 404

3. Principal Place of Business (if different from line 2)

City: Alexandria State/zip (or Country) VA 22314

4. Contact Name | Telephone | E-mail (optional)

Judy Laniak | (703) 549-7404 | jlaniak@icsc.org

5. Senate ID # 19935-12

6. House ID # 19935

7. Client Name ☒ Self

TYPE OF REPORT

8. Year 2003 Midyear (January 1-June 30) ☒ **OR** Year End (July 1-December

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☐ ➪ Termination Date _____ 11. No Lobbying Act

INCOME OR EXPENSES Complete Either Line 12 **OR** Line 13

12. Lobbying Firms

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☐

$10,000 or more ☐ ➪ $ _____
Income (nearest $20,000)

Provide a good faith estimate, rounded to the nearest $20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ ➪ $ 280,000
Expenses (nearest $20,000)

14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options.

☐ **Method A.** Reporting amounts using LDA definitions on

☐ **Method B.** Reporting amounts under section 6033(b)(8) Internal Revenue Code

☐ **Method C.** Reporting amounts under section 162(e) of th Internal Revenue Code

Signature _____ Date 8/7/03

Printed Name and Title Henry Tyson

LD-2 (REV. 4/93)

Registrant Name International Council of Shopping Centers Client Name Self

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the r engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code** information as requested. Attach additional page(s) as needed.

15. General issue area code INS (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/7/03

Printed Name and Title Herb Tyson Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name Self

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the r engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code** information as requested. Attach additional page(s) as needed.

15. General issue area code BNK (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

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Wayne Mehlman	
William H. Hoffman III	

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Signature _____ Date 8/1/03

Printed Name and Title Herb Tyson Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name Self

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15. General issue area code TAX (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

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William H. Hoffman III	

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Signature _____ Date 8/7/03

Printed Name and Title Herb Tyson Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name Self

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15. General issue area code CAW (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/7/03

Printed Name and Title Herb Tyson Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name Self

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15. General issue area code TEC (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/1/03

Printed Name and Title Herb Tyson Staff V.P. Government Relations

Registrant Name International Council of Shopping Centers Client Name Self

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the r engaged in lobbying on behalf of the client during the reporting period. **Using a separate page for each code** information as requested. Attach additional page(s) as needed.

15. General issue area code ENV (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

18. Name of each individual who acted as a lobbyist in this issue area

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Wayne Mehlman	
William H. Hoffman III	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/7/03

Printed Name and Title Herb Tyson Staff V.P. Government Relations / /

Registrant Name International Council of Shopping Centers Client Name Self

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15. General issue area code CSP (one per page)

16. Specific lobbying issues

see attached issue briefs

17. House(s) of Congress and Federal agencies contacted ☐ Check if None

U.S. House of Representatives
U.S. Senate
E.P.A.

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Name	Covered Official Position (if applicable)
Rebecca M. Sullivan	
Wayne Mehlman	
William H. Hoffman III	

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Signature _____ Date 8/7/08

Printed Name and Title Herb Tyson Staff V.P. Government Relations

Form LD-2 (Rev.6/98)

International Council of Shopping Centers

ADA NOTIFICATION AC

Issue E

Updated

ISSUE

The intent and spirit of the Americans with Disabilities Act of 1990 is unfort being abused by a growing number of attorneys who are filing, or threatening lawsuits against property owners for minor, technical access violations. Fearing tl hassle and expense of lawsuits, as well as the potential negative publicity, these p owners are being forced into settling these claims with these attorneys.

BACKGROUND

Some attorneys have created a cottage industry of inspecting various shopping retail stores and restaurants and then identifying minor infractions of the ADA, in those in parking lots, walkways or bathrooms. Without giving property ow merchants an opportunity to remedy the alleged violations, these attorneys are fi threatening to file, lawsuits that usually lead to cash settlements – part of which the attorneys and the rest to a disabled plaintiff(s). By creating a multitude of case attorneys are generating substantial amounts of income for themselves at the exp shopping center owners and retailers.

LEGISLATION

To help rectify this problem, Representative Mark Foley (R-FL) has reintrodu *ADA Notification Act* (H.R. 728) which would give property owners 90 days t alleged ADA violation after they have been notified before a related lawsuit can a We are hopeful that the House Judiciary Committee will debate this bill during tl Congress, and that companion legislation will soon be introduced in the Senate.

Legislation is still needed despite the fact that the Supreme Court, in *Buckhanno and Care Home, Inc. v. West Virginia Department of Health and Human Re* (2001), held that a business is not liable for attorneys' fees if it voluntarily cor ADA violation before the case gets to court.

OUR POSITION

ICSC supports H.R. 728 since it would curtail the abusive practice of certain a filing, or threatening to file, lawsuits for easily correctable ADA infractions, whil same time preserve the rights of disabled people to bring lawsuits for more violations. ICSC has been working with a coalition of business groups to legislation enacted into law.

ICSC recommends that its members take appropriate measures to comply with state and local ADA access laws in order to better serve the disabled communit reduce the risk of related lawsuits.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.

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BANKRUPTCY REFOF

Issue E

Updated

ISSUE

Over the past few years, an increasing number of financially healthy compani been filing for bankruptcy protection as a business tool. Because businesses do n to be insolvent to declare bankruptcy, more and more solvent companies are reorg under Chapter 11 of the Bankruptcy Code in order to restructure themselves a unprofitable stores.

To make matters worse, many judges are giving bankrupt tenants unreasonab periods of time to decide whether they want to assume or reject their leases (wh stores often remain vacant). As a result, many shopping center owners are losing over their own properties, customer traffic at theses centers is down, neighboring are losing business (and may be able to cancel their leases), retail employees ar jobs, and local economies are losing desperately-needed tax revenues. In additio bankrupt tenants are being allowed to assign their leases to other retailers operations clearly violate "use" and other important clauses in the original lease.

BACKGROUND

Congress has addressed the issue of bankruptcy reform for decades. In 1994, C created the National Bankruptcy Review Commission to investigate and stud relating to the Bankruptcy Code. As part of its review, the Commission analyzed 11 of the Code, including provisions in Section 365 that affect shopping center le 1997, the Commission submitted a report to Congress that contained a detailed st of their findings and conclusions, along with recommendations for legislative administrative action.

Despite repeated attempts by proponents to pass bankruptcy reform legislation last three Congresses, its enactment has remained elusive. In 1998, legislation pa House but languished in the Senate. In 2000, a reform package passed both th and Senate but died by "pocket veto" on former President Clinton's desk.

In November 2002, a long-awaited Conference Report failed to pass the Hous though the original bills were approved overwhelmingly in both the House and and had President Bush's support. The bill's downfall was mainly due to a p initiated by Senator Charles Schumer (D-NY) relating to abortion clinic protester caused a block of conservative House Republicans to vote against the bill – ul killing it. The House then passed a modified bill (without the abortion clinic pr and sent it to the Senate, but Democratic leaders refused to bring it up for a vote.

LEGISLATION

ICSC supports the *Bankruptcy Abuse Prevention and Consumer Protection A* (H.R. 975) which was introduced by House Judiciary Committee Chairm

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Sensenbrenner (R-WI) (without the abortion clinic provision) and passed by the March 19 by a 315-113 vote. Senate action on the bill is still pending.

H.R. 975 addresses several issues important to our industry, including those relat the amount of time a bankrupt tenant has to assume or reject its leases – the bill v retailers 120 days to decide, plus another 90 days "for cause," plus additional time to by the landlord; (2) the adherence of "use" and other lease provisions upon as (3) greater access to creditors' committees; (4) the administrative priority of rents leases that are assumed and later rejected; and (5) the curing of certain non defaults before a lease can be assumed and assigned.

OPPOSING VIEWPOINTS

Some retailers claim that they need the long extensions of time in order to p determine which leases should be assumed and rejected. While we agree that the 60-day period may not be enough time to make such decisions, a fixed, deter period of time in which to assume or reject needs to be established so shopping owners can retain some control over their properties.

Some also claim that shopping centers owners are not harmed during the extended retailers have to assume or reject their leases so long as such retailers are payi monthly rent on time. The problem is, even if an owner is receiving rent dur period, many bankrupt merchants cease their retail operations and leave thei "dark." This, in turn, casts a shadow over the entire shopping center and ne affects neighboring stores' customer traffic and sales revenues. This not only re owners receiving reduced "percentage" rents, but can also affect the lease agre they have with these other stores.

OUR POSITION

ICSC believes that solvent companies should not be able to use the bankruptcy sy break valid leases and that decisions on whether to assume or reject leases sh made within a reasonable period of time. Companies faced with financial cata should be able to reorganize under Chapter 11. However, our bankruptcy laws nee strengthened to protect all creditors and to prevent companies from abusing the Bankruptcy should be the final option, not the preferred option of businesses.

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.

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self-implementing, but a decision must still be made on standards of due diligence. members believe that the Association of Standard Testing Materials (ASTM) curre use by EPA is sufficient.

The Brownfields Revitalization Act establishes a new grant program for assessm cleanup of Brownfields sites. While recipients of the grants are restricted to gove agencies and non-profit organizations, opportunities for partnerships between rea developers and local communities can significantly enhance the commercial viat many marginal commercial real estate transactions. EPA is currently enga developing guidance for the new grant program.

OUR POSITION

Much progress has been made on these issues in recent years. ICSC has beer center of the action to unleash the economic potential embodied in the redevelopm reuse of Brownfields sites. We will continue to work with EPA to implement a interpretation of the legislation and with Congress on adequate funding for the pr As efforts unfold for further modification of Superfund, ICSC's role will largely of vigilance to ensure that gains realized from the Brownfields Revitalization Act weakened or lost.

For more information, contact William H. Hoffman, III at 703-549-7404, ext. 224.

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E-COMMERCE TAXATI(

Issue E

Updated

ISSUE

The Internet is rapidly becoming America's new marketplace. While tax policy not discourage consumers from exploring this new purchasing channel, it sho favor Internet purchases over store purchases either. Instead, tax policy should pr level p laying f ield f or t raditional r etail b usinesses, m ail o rder c ompanies a nd I based merchants.

BACKGROUND

Over the years, Congress and the courts have addressed the issue of state-impose and use taxes on remote sellers as it applied to mail-order merchants. In 19 Supreme C ourt i n *Quill v. N orth D akota*, h eld that a s tate c ould n ot r equire a retailer to collect sales or use tax on its behalf unless that merchant had a p presence (or "nexus") in that state. The Court said it would be too burdens retailers if they were required to collect sales taxes for hundreds of state an jurisdictions across the country. H owever, it did say that Congress c ould addr interstate commerce issue at some other time.

The recent explosion of Internet commerce brings a new focus and sense of urg this issue. The Internet marketplace is rapidly expanding, yet it remains mostly fr traditional forms of taxation. According to a University of Tennessee study, unc state and local sales taxes from e-commerce exceeded $13 billion in 2001 projected to exceed $45 billion in 2006.

In a dramatic reversal from the late-1990's, most states are now experiencing sig budget deficits and desperately need to look for other sources of revenue, in uncollected sales and use taxes. Otherwise, states and localities will have to start taxes (including business income and real estate taxes) and/or cut back on e governmental services.

The c urrent d ilemma facing C ongress i s w hether i t s hould g ive s tates t he auth require out-of-states merchants to collect taxes currently owed on e-commerce s maintain the current tax collection system (which gives most on-line sellers an advantage over traditional merchants.).

LEGISLATION

In 1998, Congress enacted a three-year moratorium which expired on October 21 on Internet access taxes and new, multiple or discriminatory taxes on ele commerce. The moratorium was later extended until November 2003, however, it address the remote sales tax collection issue.

ICSC supported legislation introduced in the 107th Congress by Senators Mike E WY) and Byron Dorgan (D-ND) and Representatives Ernest Istook (R-OK) and V Delahunt (D-MA) that, in addition to extending the moratorium, would give thos that simplify their sales tax systems the authority to collect remote sales

Unfortunately, a Senate amendment that would have provided such authority was t

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In the meantime, the Streamlined Sales Tax Implementing States, a group consi 34 states and the District of Columbia, last year approved a Streamlined Sales a Tax Agreement that would encourage, but not require, remote sales tax col Among other things, the agreement calls for uniform definitions, sourcing rules, a number of state and local sales tax rates, and amnesty provisions. The agreem become effective once 10 states representing at least 20% of the U.S. population e conforming changes. So far, 11 states have enacted conforming legislation, h because those are states with smaller populations, the 20% threshold has not y met. 12 other state legislatures are currently considering the Tax Agreement.

In February 2003, some of the nation's largest retailers, including Wal-Mart, Targ Toys R Us, entered into an agreement with 38 states and the District of Columbia voluntarily collect sales taxes from their customers who buy over the Internet, eve those in states where their on-line subsidiaries do not have a physical presence. In those states have agreed not to pursue sales and use taxes they believe are owed to due to the close relationship (agency) between the on-line retailers and their brick-mortar affiliates.

Legislation will soon be introduced in the 108th Congress that would allow thos that simplify their sales tax systems (based on the Streamlined Sales and U Agreement) to require remote sellers to collect sales taxes on their behalf.

OPPOSING VIEWPOINTS

Many Internet-based retailers claim that imposing remote sales tax co requirements on them would be too burdensome, given the thousands of state a taxing jurisdictions across the country. While we agree that states and localities simplify their sales and use tax systems, there is currently software available t adequately determine, collect and remit a merchant's remote sales taxes. These also claim that remote sales tax collection will slow the growth e-commerce. Ac to Juniper Research, most of those surveyed said that remote sales tax collectio not affect their Internet purchase decisions.

OUR POSITION

ICSC believes that tax policy should be consistent and equitable for all fc consumer purchases – whether they take place in shopping centers, via mail order the Internet. Internet retailers should not receive a tax advantage at the exp traditional retailers and state and local governments.

ICSC and the e-Fairness Coalition will continue to work to convince Congress Administration to enact remote sales tax collection legislation as they debate a extension of a moratorium on Internet access taxes and discriminatory e-commerc

For more information, contact Wayne A. Mehlman at 703-549-7404, ext. 225.

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ENDANGERED SPECI

Issue E

Updated Febr

ISSUE

The Endangered Species Act (ESA) needs to be reformed. It has failed to conse species it was meant to protect and in the process has wreaked economic havoc an distress on communities throughout our nation.

BACKGROUND

The ESA has often been used as a tool by no-growth advocates to curtail progr growth. The ESA was first enacted in 1973 to protect species believed to be on th of extinction. When enacted, 109 species were listed for protection. Today, almos species are listed, with more than 400 additional candidate species. Only twent species have been "delisted" or removed from the species list since 1973: Seven l of extinction, six because of data errors in the original listing process, and o officially declared as reaching recovery populations.

LEGISLATION

It is clear that the ESA does not work. According to the General Accounting Offic than 90 percent of the species listed under the ESA rely upon private land for som of their habitat. The current system inadequately protects the environment and economically harmful. In addition, species are listed without appropriate scienti review. It is imperative that the ESA be reformed to reflect current scienti economic realities.

ICSC supports any legislative initiative that will ensure sound scientific practice more integral role in the determination of listing and delisting of species and under the ESA. ICSC believes the 108th Congress should pick up where the p congress left off in introducing and moving legislation that would require scienti review and greater input from a wide array of scientific experts.

OUR POSITION

ICSC will continue to advocate for reform of the Endangered Species Act landowners are treated fairly and responsibly. We will work with suppor legislative reform of the act which include, at a minimum the following principles:

- Responsible, responsive, and timely judicial review and/or regulatory rul development applications;
- Economic impact assessment of the imposition of legislation and r regulation;

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- Efficient and fair system by which a property owner can seek timely red laws and regulations that result in a taking without compensation or that d economic benefits of the "highest and best" use of his/her property;

- Standards by which the environmental value of property shall be establishe

- Enhancement of the state and local role in the listing and delisting pro reflect local biological and economic concerns.

For more information, contact William H. Hoffman, III at 703-549-7404, ext. 224.

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ENER

Issue

Updated Fe

ISSUE

The United States needs to implement a comprehensive energy policy that will r increased energy supplies, electrical generation and transmission capacity, and in reliability, efficiency and conservation, while addressing the concerns of comr industrial and residential consumers. A comprehensive approach is the best way to all consumers, including ICSC members, realize the most wide-ranging benefit also ensuring the country conserves its natural resources. In addition, the government should continue to support deregulation efforts, mirroring the states th implemented successful deregulation programs.

LEGISLATION

The Congress is expected to continue to debate energy legislation in 2003. ICS advocate for those elements in the legislation that will provide for increased supplies while ensuring advances made under state deregulation programs are no back by the federal government.

OUR POSITION

ICSC believes elements of a comprehensive energy policy should consist of, but limited to, the following:

- Modernization and expansion of the existing power transı capabilities
- Increasing domestic energy supplies;
- Increasing electrical generation capacity where needed;
- A national framework governing utility restructuring modeled o state plans that have proven extremely beneficial to consumers;
- Incentives for all consumers to improve their energy efficiency tax credits and equipment upgrade benefits;
- Increased R&D on alternative energy sources and new technologie
- Regulators should be vigilant in their elimination of undue marke that could negatively influence pricing.

In addition, ICSC is committed to ensuring that thoughtful and manageable ele restructuring programs are implemented. ICSC believes a national framework sh developed – modeled on successful state programs – to reduce confusion being ge by the state-by-state deregulation process.

ICSC also believes that its members with operations in multiple locations should to aggregate power among these locations without regulatory restrictions aggregation by multiple operators, whether in the shopping center industry o commercial/industrial interests, will increase efficiency for the individual intere

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promote an overall efficiency increase to the benefit of all suppliers and users of and conservation while at the same time benefit the operators. The end result is a to the entire community both economically and environmentally. ICSC r companies will continue to work toward more efficient energy usage and wo federal, state and local governments to support efforts that will provide our m economical and reliable energy supplies.

For more information, contact William H. Hoffman, III at 703-549-7404, ext. 224.

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GROWTH MANAGEMEN

Issue B

Updated Ju

POSITION

ICSC does not oppose sound, well thought out growth management planning. Hov "smart growth" is not the same as "no growth." We will work to ensure that we re to the needs of regional populations in an environmentally and economically sounc matter. Neighborhood convenience shopping centers have many benefits to commu including an increased tax base, job creation, and serving to reduce traffic congesti

Development decisions are based on the demands of the local market and should n dictated or restricted by the federal government and non-elected federal agencies. authority must be maintained in determining how communities choose to develop. the local government officials and economic planners that understand the underpin of their local economies, their needs and the cultural environment. Injecting federa agencies into the growth management process as a federal planning commission w create an overly bureaucratic and inefficient arbiter to development that does not understand the nuances of each individual local economy.

ICSC has created a multi-disciplinary task force to address these growth managem issues. Working with membership and with other organizations, ICSC will work to preserve local control over growth and development issues.

POLICY PROPOSALS

ICSC acknowledges that the concern over growth was not created in a void. Traffi congestion and over-crowded public schools are most often noted as issues of grea concern to the general public, especially those who live in growing suburbs. These challenges must be balanced with the positive aspects of growth and development, positive economic benefits that development in general (and retail development in particular) has on state and local economies, such as an increased tax base, the con provision of goods and services to the community, and the creation of jobs.

The owners, developers and retailers of shopping centers understand that growth is concern, but also recognize that smart growth cannot mean no-growth. If it were t embraced as a planning tool, the key elements of our growth management strategy include:

1. Create an environment that will encourage citizens to stay in the community inst moving out: better schools, better infrastructure, less crime, and better integration uses. Encourage retail development at appropriate locations within the community that citizens won't have to drive long distances to do their regular shopping.

2. Provide incentives and adopt flexible regulations that allow development to exp

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3. Balance protection of agricultural and forest land, open spaces, scenic and cultu resources, and environmentally sensitive lands with the provision of adequate land meet the future economic and growth needs of the community.

4. Maintain vitality of traditional downtowns, main streets, older suburban and inn areas where feasible by encouraging redevelopment and infill development while continuing to recognize the need to provide retail to growing areas.
5. Maintain land use planning and control at the local level, with the states providi financial resources and generalized policies for local planning and economic development.

6. Establish long-term local comprehensive plans providing for adequate supply of with infrastructure for residential, commercial, recreational and industrial uses to n future growth needs of the community.

7. Make development decisions predictable, fair, timely and cost effective.

8. Plan for a diversity of shopping opportunities; locating neighborhood and regio scale centers in appropriate locations so that consumers have a wide variety of sho alternatives while also reducing required travel distances.

9. Develop public/private partnerships to work collectively to meet the needs of th community.

10. Create economic and regional incentives to encourage infill development and t reuse of brownfields.

For more information, contact Stephanie Spooner at 703-549-7404, ext. 223.

International Council of Shopping Centers

LEASEHOLD IMPROVEME

Issu

Upc

ISSUE

One of the most important obligations of shopping center owners is to provide r efficient and environmentally sound retail space for their tenants and the public. must periodically refurbish and replace many structural components of their buil such as internal walls, ceilings, partitions, plumbing, lighting, floor coverings, el and communication outlets and computer data ports—in order to meet the specifi of their tenants and to comply with government regulations. Unfortunately, curr dictates that these modifications—commonly referred to as "leasehold improvem be depreciated over 39 years. Most leasehold improvements, however, have shorter economic life—usually between 3 and 10 years.

BACKGROUND

Before 1981, building owners could recover the costs of leasehold improvements term of the lease to the tenant. The rationale behind this reflected the fact that le improvements for one tenant are rarely suitable for another, and when a tenant le is usually necessary to destroy or abandon such improvements and rebuild for tenant.

In 1981, Congress set aside this principle of matching income from the lease v costs of leasehold improvements. A single depreciation life of 15 years was esta for all buildings and all improvements made within. Since then, the recovery pe nonresidential real property has been gradually increased to 39 years.

In 1996, Congress enacted legislation that allows owners to expense the unre basis of leasehold improvements in the year they are destroyed or aba Previously, only tenants who owned such improvements could do so. Unfort leasehold improvements must still be depreciated over a 39-year recovery perio they are in service.

In 2000, the consulting firm of Deloitte & Touche completed a study that estim economic depreciation of various types of real estate structures and analyze estimates for tax depreciation purposes. According to the study, retail structures estimated economic depreciation recovery period of 12 years based on annual re years based on building values) – both of which are significantly shorter than the currently allowed under the tax code.

LEGISLATION

In 2002, President Bush signed into law an economic stimulus bill that, amon things, allows taxpayers to claim (for both regular and alternative minimum tax pu an additional 30 percent "bonus" first-year depreciation for certain qualified p

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including leasehold improvements, purchased between Sept. 11, 2001 and Sept. 1(The law provides for even greater tax incentives for property built in the damaged New York City.

In May 2003, Congress enacted another economic stimulus package that i increasing the first-year "bonus" depreciation allowance to 50-percent and extenc expiration date to December 31, 2004. It is unclear at this time whether this pr will become one of the many so-called temporary "extender" provisions that Con pressured to extend every few years.

Representative Clay Shaw, Jr. (R-FL) and Senator Kent Conrad (D-ND reintroduced legislation, H.R. 1634 and S. 576, that would permanently redı depreciation period for leasehold improvements from 39 to 10 years. [Before th economic stimulus bill was enacted into law, the House passed three versions cor provisions that would have permanently reduced the depreciation period for le improvements to 15 years.]

OUR POSITION

ICSC advocates shortening the depreciable lives of leasehold improvements so t more closely aligned with their economic lives. As a result, we strongly suppc 1634 and S. 576 and believe they would encourage shopping center owners tc more resources into their properties. We would also support any measures that further extend and/or expand the first-year "bonus" depreciation provision.

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PRIVATE PROPEF

Issue

Updated Fe

ISSUE

The "takings" clause of the Fifth Amendment to the U.S. Constitution states, in pa shall p rivate p roperty b e t aken f or p ublic u se w ithout j ust c ompensation." D esp protection of the Constitution, countless landowners have been deprived of their pr prosecuted, fined, or in some cases, jailed, because of the existence of wetlar endangered species on their property.

BACKGROUND

The often reckless enforcement of laws such as the Endangered Species Act (ES Section 404 of the Clean Water Act (CWA) (the source of regulations limit development of wetlands) has driven down market value and often rendered property useless for agricultural or development purposes. Government "taki essentially an act of government restricting the rights of private property ow pursue specific activities on their private land without compensation—have dramatically with the increase of regulation and galvanized private property own action to defend their property rights. All too often, however, property owners through a variety of procedural and judicial hurdles that take years to resolve.

The Fifth Amendment is being attacked, both legislatively and judicially. ICSC m ultimately want to be able to develop their land. Developers purchase land investment tool, not as an opportunity to seek compensation from any goverr entity.

The vast majority of land in America is privately owned. Regulators need to wo these landowners, not against them. Regulators and lawmakers should recogn progress we have made since the 1970s and encourage new and better ways to and enhance our environment.

LEGISLATION

ICSC continues to advocate the need for Congress to enact legislation that strengthen the rights of property owners. The 108th Congress has thus far not initia serious legislative efforts on the property rights issue(s). ICSC, in 2002, did joi real estate organizations in the filing of an amici curiae brief in the 8th Circuit C Appeals and we will continue to monitor property rights issues across the country.

OUR POSITION

ICSC believes that it is necessary to protect private property through the adop appropriate environmental legislation and regulation and supports action that:

- Provides standards by which the environmental value of property sl established;

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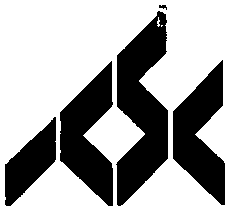

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- Provides an efficient and fair system by which a property owner can seek redress for laws and regulations that result in a taking without compensa that deny the economic benefits of the "highest and best" use of his propert

- Provides for responsible, responsive, and timely judicial review and/or reg rulings on development applications; and

- Incorporates an economic impact assessment of the imposition of legislat resulting regulation.

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PROPOSED BANKING RU
Issue B

Updated Ju

ISSUE

The Department of Treasury and the Federal Reserve Board issued Proposed F December 2000 that would permit financial holding companies and financial subs of national banks to engage in real estate brokerage and management activities. believes these Proposed Rules could have a significant negative impact on our re management members.

BACKGROUND

In 1999, Congress passed and President Bill Clinton signed into law the *Gramm Bliley Act* – a bill that amends the *Bank Holding Company Act*. Among other thi Act allows financial institutions to participate in securities and insurance activ including such activities in its definitions of activities that are "financial in natu "incidental to a financial activity."

Although the Act permits financial institutions to engage in other activities Treasury determines, in consultation with the Federal Reserve Board, to be "fina nature" or "incidental to a financial activity," it does not give any indication explicitly or implicitly, that real estate brokerage or management activities are, o be, included in either definition.

However, shortly after the Act became law, the banking industry persuaded Treas the Board to issue Proposed Rules (also known as "Regulation Y") that would t estate brokerage and management activities as "financial in nature" or "incid financial activity."

ICSC has been working with the National Association of Realtors, NAREIT, t Estate Roundtable, and the Building Owners and Managers Association Inter (BOMA) to oppose these Proposed Rules. Elizabeth Holland (Abbell Corp Chicago), Chair of ICSC's Economic Issues Subcommittee, expressed our conce House Financial Services Subcommittee last July. As a result of the intense l pressure against the Proposed Rules, former Treasury Secretary Paul O'Neil an last year that it would not make a final decision on this issue until sometime in 20

LEGISLATION

Representatives Ken Calvert (R-CA) and Paul Kanjorski (D-PA) and Senator Allard (R-CO) have reintroduced the *Community Choice in Real Estate Act* (H.R. S. 98) that would bar national banks and financial holding companies from directl indirectly participating in real estate brokerage or management activities.

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In February, Congress approved an omnibus spending bill that includes a provisior introduced by Representative Anne Northup (R-KY), prohibiting the Treasury Department from spending funds through September 30, 2003 to implement the Pr Rules.

OUR POSITION

ICSC supports H.R. 111 and S. 98, and urges Treasury and the Federal Reserve B withdraw their Proposed Rules. We believe that real estate is not a financia instrument or product. Therefore, related activities such as real estate brokera management, cannot, and should not, be construed by Treasury and the Board to b "financial in nature" or "incidental to a financial activity."

We also believe that Congress, in passing the *Gramm-Leach-Bliley Act*, made it cl financial institutions can only participate in financial activities and not in com activities, such as real estate brokerage and management. Furthermore, sig changes to the Act, such as those proposed by Treasury and the Board, sh deliberated and legislated by Congress, not by the aforementioned Agencies t administrative regulations.

ICSC is not opposed to fair and healthy competition, however, we are concerned th some financial institutions could use their leverage in a manner that could negative affect our real estate management members and suppress competition in the long t For example, if a financial institution is allowed to engage in real estate brokerage management activities, its objectivity could be compromised or completely eroded it reviews a proposed loan that also gives it the opportunity to participate in the pr the project as a broker or a property manager.

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LEGISLATION

The politically charged climate surrounding national wetlands policy makes mea legislative reform nearly impossible at this time. Rep. Walter Jones (R-NC) intr legislation in the 107th Congress that would have created a national wetlands mi banking program. ICSC supported this bill and will again should Rep. Jones in similar legislation in the 108th Congress. ICSC stands ready to support any leg effort that will utilize economic incentives to preserve and restore our nation's w In addition, ICSC will continue to strongly urge the congress to move forwa legislation that will bring fairness and clarity to the regulatory permitting process.

OPPOSING VIEWPOINTS

Many in the environmental community argue that no progress has been made national effort to protect our wetlands and that the federal government must play stronger role in permitting and land use decisions. However, statistics illustr through mitigation and conservation landowners are protecting and improving the of wetlands throughout the country by working with state and municipal agencies.

OUR POSITION

Serious questions concerning the legality of the new permitting procedures, the supporting data to justify the changes and the ability of the Corps to adequately the increased workload resulting from these changes make the new permits vulne legal challenges. ICSC is participating in litigation filed by other industry groups t an *amicus curiae* brief. In addition, ICSC will be filing amicus briefs as part of a industry coalition in a number of cases important to deciding the regulatory auth the federal government over isolated, non-contiguous wetlands. ICSC believes it to reauthorize the Clean Water Act in order to bring clarity and fairness to the w permitting program and to adequately insure the protection of valued wetlands res Among the principles that should be embodied in this legislative reform are:

- Respect for existing local and state laws on water quality and land use p and development so that they are not be subordinate to federal w regulations.
- Explicit statutory requirements that the value and functionality of wetl taken into account in the regulatory process, including reasonable lir mitigation.
- Definition of circumstances where the landowner would be entit compensation for instances where permit denials constitute an u "taking."

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MOLD GROW

Issue

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BACKGROUND

Mold growth in schools, courthouses, libraries, office buildings, hotels and res dwellings is receiving increased public attention. Mold growth in shopping cent not been a significant problem to date. Molds are everywhere in the environm their mere presence is not cause for concern. In the presence of moisture, mold ca on almost any organic material, including wood, paper, paint, fabric, plant soil ar In an effort to propagate, live molds release airborne spores.

The health effects associated with exposure to molds vary among individuals directly related to exposure durations. Some individuals may experience an reaction or sensitivity to high concentrations of airborne mold spores. Other effects have been alleged but are unsupported by current medical research. I known which molds at what levels pose a threat to human health. In additior health effects, active mold growth is often associated with objectionable odors reduces the overall level of satisfaction with indoor air. The U.S. Enviro Protection Agency (EPA) has testified that additional basic scientific rese necessary before health-based indoor air standards for mold can be established, indicated that there is insufficient scientific/medical data to establish guidelines fo molds cause disease and at what levels.

In order to protect the public health, it is important that any standards developed area are based on sound science and are not made prematurely. Despite the information, political and popular concerns have prompted legislation in several s pursue health-based exposure standards for mold in indoor air. An incre aggressive plaintiffs' bar is pursuing thousands of liability inquiries nationally.

The research literature shows that active growth is almost always associated with biological contamination (e.g., black or colored patches, water stains). Mold moist, wet, or damp environment in order to thrive. Therefore, to preven propagation, all buildings should undergo scheduled maintenance that ir inspection for water leaks, inspection of seals around windows and doors, inspe rooftops and inspection for visible mold in moist or damp parts of a building. Cor that could lead to mold or fungi growth should be corrected immediately to possible problems in the future.

OUR POSITION

- ICSC supports the development of sound science concerning the effects o on people, reflecting various exposure scenarios.
- State and Federal Regulators should desist from setting action levels for this time, since sufficient and sound scientific data do not yet exist.

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- Observations for visible mold growth are usually sufficient to determ potential for mold growth.
- Testing for mold spores is often inconclusive and misleading and not he addressing the root problem of mold growth (moisture entry).
- When moisture control problems in buildings are found, property m should correct them for reasons of property protection, health and comfort.
- ICSC supports the continued development of effective and practical guidance summarizing standard observation and remediation procedu moisture control problems and mold growth.

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